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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,333	03/29/2004	Mark Howard Krietzman	ChiWorks Stick 01	5082
7590	08/15/2005		EXAMINER	
Mark Krietzman P.O. Box 3185 Palos Verdes, CA 90274			LEWIN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/813,333	KRIETZMAN, MARK HOWARD
	<b>Examiner</b>	<b>Art Unit</b>
	Allana Lewin	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

**ONE**

AC

#### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE **1 MONTH(S)** FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-20 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, drawn to a method of exercise, classified in class 482, subclass 148.
- II. Claims 8-20, drawn to an exercise device, classified in class 482, subclass 121.

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the method of exercise as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different method of exercise. (MPEP § 806.05(e)). In this case, the method of exercise can be used with any pressure opposing structure involving a stick member on a guided path such as a computer joystick.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

### ***Species Election***

This application contains claims directed to the following patentably distinct species of the claimed invention. Applicant is required to choose one species from each of the following groups:

**A. Resistance means:**

1. Figures 1C, 1D, 2 and 3: magnetic resistance along guide path.
2. Figure 4: magnetic resistance supported by a curved base.
3. Figures 10 and 11: provided by resilient members (springs, elastic bands) attached to the base and the stick member.
4. Figure 12: provided by pneumatic and/or hydraulic cylinders.
5. Figures 13 and 14: provided by pressure, involving a fixed or variable distance between the side walls.
6. Figure 15: provided by friction, involving suspension guides, adjusted by a knob, that support a brake-type element.
7. Figure 16: provided by friction, involving suspension guides, adjusted by a knob, that support a brake-type element along a curved base.
8. Figure 17: provided by friction, involving suspension guides, adjusted by a knob, that support a brake-type element affixed to the base against the hub edge.
9. Figure 18: provided by friction, involving suspension guides, adjusted by a knob, that support a brake-type element affixed to the base against the inner rim edge of the hub.
10. Figures 19A and 19B: provided by friction, involving a strap, adjusted by a knob, which exerts tension on the support hub.
11. Figure 20: provided by a weight, the amount of which may be fixed or adjustable, that is movably attached to the lower region of the stick member and moves across the base.

**B. Stick configuration:**

1. Figures 1A and 1B: one stick member.
2. Figures 7A-7C: dual stick member.

**C. Handles:**

1. Figures 8A and 8E: moving stick exercise with the addition of a crossbar.
2. Figure 8B: a pushing or pulling element in the shape of a sphere is attached or formed.
3. Figure 8C: a pushing or pulling element with a generally flat area is attached or formed.
4. Figure 8D: a curved pushing or pulling element is attached or formed.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 8 and 9 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571.272.5560. The examiner can normally be reached Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571.272.4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332